

AMENDED IN SENATE APRIL 8, 2013

**SENATE BILL**

**No. 48**

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**Introduced by Senator Hill**

December 19, 2012

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An act to ~~amend Section 854 of, and to add Sections 740.5 and 854.5 to, add Section 740.5 to the Public Utilities Code, relating to energy public utilities.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 48, as amended, Hill. ~~Energy-related research; mergers; entities formed to receive benefits on behalf of ratepayers. Public utilities; research and development projects.~~

Under existing law, the Public Utilities Commission (PUC) has regulatory authority over public utilities, including electrical corporations ~~and~~, gas corporations, *heat corporations*, and *telephone corporations*, as defined. Existing law authorizes the PUC *commission* to fix the rates and charges for every public utility, and requires that those rates and charges be just and reasonable. Existing law authorizes ~~certain public utilities, including~~ electrical corporations ~~and~~, gas corporations, *heat corporations*, and *telephone corporations* to voluntarily adopt certain research and development programs and authorizes the PUC *commission* to allow inclusion of expenses for research and development in rates. Existing law requires the PUC *commission* to consider specified guidelines in evaluating the research, development, and demonstration programs proposed by electrical corporations and gas corporations.

~~This bill would require that any research and development or research, development, and demonstration project that is performed by a 3rd party, as defined, and is funded in whole or in part by the ratepayers of~~

~~an electrical or gas corporation be subject to a merit review, as defined. The bill would require the State Energy Resources Conservation and Development Commission to select the persons to perform the merit review. The bill would require the PUC to prepare and submit to the policy and fiscal committees of the Legislature, by February 1 of each year, a written report listing all research and development, or research, development, and demonstration projects, including specified information, that were funded in whole or in part by the ratepayers of an electrical or gas corporation during the previous 5 years.~~

~~The Public Utilities Act, prohibits any person or corporation from acquiring or controlling, directly or indirectly, any public utility organized and doing business in this state, without first securing authorization to do so from the PUC. The act requires the PUC, before authorizing the merger, acquisition, or change in control of an electric, gas, or telephone utility having revenues in excess of a specified amount, to consider, among other things, that the proposal provides short-term and long-term economic benefits to ratepayers, and equitably allocates the short-term and long-term forecasted economic benefits of the proposed merger, acquisition, or control, as determined by the PUC, between shareholders and ratepayers, where the PUC has ratemaking authority. Existing law requires that the ratepayers receive not less than 50% of the benefits.~~

~~This bill would prohibit the PUC, when authorizing a merger, acquisition, or change in control, from establishing an entity to receive benefits on behalf of ratepayers without first obtaining statutory authorization from the Legislature. The bill would prohibit a commissioner of the PUC from being an officer or director of an entity formed to receive benefits of behalf of ratepayers resulting from approval of a merger, acquisition, or change in control of an electrical, gas, or telephone corporation.~~

*The bill would require the commission, by no later than January 1, 2016, to consolidate all review and approval of research and development projects into a single research investment planning proceeding that would be required to recur no more frequently than every 2 years. The bill would prohibit the commission from allowing cost recovery of expenses for funding any research and development project outside the consolidated proceeding, except for the excluded projects and programs, as defined, for which a public utility applied for research and development funding prior to January 1, 2013. The bill would require the commission, when reviewing any request for*

*authorization of expenses for research and development projects where the expenses are to be recovered from ratepayers, to place a preference on projects if the application was solicited in a manner that provides for the maximum amount of competition, unless limited and unique circumstances exist where it is not possible or desirable to maximize competition, and the proposed project encourages the use and leveraging of matching funds where possible. The bill would require that certain research and development projects first undergo peer review, as defined, that considers specified matter. The bill would require the commission, before initiating a consolidated research planning proceeding, to prepare and submit a report to the relevant policy and fiscal committees of the Legislature listing all research and development projects where the expenses of the project were or are recovered from ratepayers during the previous 5 years.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 740.5 is added to the Public Utilities  
2     Code, to read:  
3     740.5. (a) For purposes of this section, the following terms  
4     have the following meanings:  
5     (1) “Excluded projects and programs” means research and  
6     development or research, development, and demonstration projects  
7     and programs that are the subject of Application 12-11-009,  
8     Application 11-03-001, Application 11-03-002, Application  
9     11-03-003, Application 12-07-001, Application 12-07-002,  
10    Application 12-07-003, Application 12-07-004, Application  
11    11-06-006, Application 11-06-029, and Application 11-07-001.  
12    (2) “Peer review” means a thorough, consistent, and objective  
13    examination based on preestablished criteria by persons who are  
14    independent of persons submitting an application, or conducting  
15    the research and development, and who are knowledgeable in the  
16    field of endeavor to which the application or research and  
17    development pertains. Peer reviewers shall be free of any financial  
18    or other interest which could significantly impair the individual’s  
19    objectivity or create and unfair competitive advantage for any  
20    person or organization.

1     (3) “Research and development project” includes a research,  
2     development, and demonstration project or program.

3     (b) No later than January 1, 2016, the commission shall  
4     consolidate all review and approval of research and development  
5     projects into a single research investment planning proceeding  
6     that shall recur no more frequently than every two years.  
7     Commencing January 1, 2014, the commission shall not allow cost  
8     recovery of expenses for funding any research and development  
9     project outside the consolidated proceeding, except for the  
10    excluded projects and programs for which a public utility applied  
11    for research and development funding prior to January 1, 2013.

12    (c) When reviewing any request for authorization of expenses  
13    for research and development projects where the expenses are to  
14    be recovered from ratepayers, the commission shall place a  
15    preference on projects where both of the following are true:

16    (1) The application was solicited in a manner that provides for  
17    the maximum amount of competition, unless limited and unique  
18    circumstances exist where it is not possible or desirable to  
19    maximize competition.

20    (2) The proposed project encourages the use and leveraging of  
21    matching funds where possible.

22    (d) Unless the proposed research and development project has  
23    been selected by the public utility through an open solicitation of  
24    proposals, the commission shall not authorize expenses for a  
25    project that will be recovered from ratepayers in an amount in  
26    excess of one million five hundred thousand dollars (\$1,500,000)  
27    without the project first undergoing peer review. The peer review  
28    shall consider all of the following:

29    (1) The extent to which the same or similar research,  
30    development, and demonstration work could be performed by  
31    entities that the public utility does not select.

32    (2) The appropriateness of the level of requested funding in  
33    comparison to other projects by similarly experience individuals  
34    using similar facilities performing in similar timeframes and  
35    circumstances.

36    (3) The likelihood that the proposed work can be accomplished  
37    within the proposed time and budget by the investigators or the  
38    technical staff, given their experience and expertise and available  
39    resources.

(e) (1) Notwithstanding Section 10231.5 of the Government Code, before initiating a consolidated research planning proceeding, the commission shall prepare and submit a report to the relevant policy and fiscal committees of the Legislature listing all research and development projects where the expenses of the project were or are recovered from ratepayers during the previous five years, including for each project the citations of all published papers, all oral and poster presentations given at public meetings, and all patents awarded for the funded research. For an electrical corporation, the report may be included in the report made to the Legislature pursuant to Section 910.

(2) A report to be submitted pursuant to paragraph (1) shall be submitted in compliance with Section 9795 of the Government Code.

(f) The requirements of this section do not apply to research and development projects or programs managed by an independent contractor pursuant to subdivision (b) of Section 2851, or to those managed by the Energy Commission.

(g) Except for those research and development projects exempt pursuant to subdivision (f), any research and development project for which recovery of expenses is requested pursuant to Section 740, that furthers the goals of Section 740.1, or that advances the public interest consistent with subdivision (c) of Section 399, is subject to the requirements of subdivisions (b), (c), (d), and (e).

(h) Nothing in this section authorizes funding of research and development projects through the rates of a gas corporation that is not in compliance with subdivision (a) of Section 890.

~~SECTION 1. Section 740.5 is added to the Public Utilities Code, to read:~~

~~740.5.—(a) For purposes of this section, the following terms have the following meanings:~~

~~(1) “Merit review” means a thorough, consistent, and objective examination based on preestablished criteria by persons who are independent of persons submitting an application, or conducting the research and development, and who are knowledgeable in the field of endeavor to which the application or research and development pertains.~~

~~(2) “State agency” includes every state office, officer, department, division, bureau, board, and commission. “State~~

1 agency” does not include the University of California or California  
2 State University.

3 (3) “Third party” means a person, corporation, or other entity  
4 that is not a state agency or an electrical corporation or gas  
5 corporation regulated by the commission.

6 (b) Any research and development or research, development,  
7 and demonstration project that is performed by a third party and  
8 is funded in whole or in part by the ratepayers of an electrical or  
9 gas corporation shall be subject to a merit review. The Energy  
10 Commission shall select the persons to perform the merit review.  
11 The Energy Commission shall use the most recent Merit Review  
12 Guide for Financial Assistance, or successor guide, issued by the  
13 federal Department of Energy pursuant to Section 600.13 of  
14 Subpart A of Part 600 of Chapter II of Title 10 of the Code of  
15 Federal Regulations (10 CFR 600.13) as a guide for conducting  
16 merit reviews.

17 (e) (1) Notwithstanding Section 10231.5 of the Government  
18 Code, by February 1 of each year, the commission shall prepare  
19 and submit to the policy and fiscal committees of the Legislature  
20 a written report listing all research and development, or research,  
21 development, and demonstration projects that were funded in whole  
22 or in part by the ratepayers of an electrical or gas corporation  
23 during the previous five years, including for each project the  
24 citations of all published papers and all oral and poster  
25 presentations given at public meetings. For an electrical  
26 corporation, the report may be included in the report made to the  
27 Legislature pursuant to Section 910.

28 (2) A report to be submitted pursuant paragraph (1) shall be  
29 submitted in compliance with Section 9795 of the Government  
30 Code.

31 SEC. 2. Section 854 of the Public Utilities Code is amended  
32 to read:

33 854. (a) No person or corporation, whether or not organized  
34 under the laws of this state, shall merge, acquire, or obtain control,  
35 either directly or indirectly, of any public utility organized and  
36 doing business in this state without first securing authorization to  
37 do so from the commission. The commission may establish by  
38 order or rule the definitions of what constitute merger, acquisition,  
39 or control activities which are subject to this section. Any merger,  
40 acquisition, or change in control without that prior authorization

1 shall be void and of no effect. No public utility organized and  
2 doing business under the laws of this state, and no subsidiary or  
3 affiliate of, or corporation holding a controlling interest in a public  
4 utility, shall aid or abet any violation of this section.

5 (b) Before authorizing the merger, acquisition, or a change in  
6 control of any electrical, gas, or telephone corporation organized  
7 and doing business in this state, where any of the utilities that are  
8 parties to the proposed transaction has gross annual California  
9 revenues exceeding five hundred million dollars (\$500,000,000),  
10 the commission shall find that the proposal does all of the  
11 following:

12 (1) Provides short-term and long-term economic benefits to  
13 ratepayers.

14 (2) Equitably allocates, where the commission has ratemaking  
15 authority, the total short-term and long-term forecasted economic  
16 benefits, as determined by the commission, of the proposed merger,  
17 acquisition, or control, between shareholders and ratepayers.  
18 Ratepayers shall receive not less than 50 percent of those benefits.

19 (3) Not adversely affect competition. In making this finding,  
20 the commission shall request an advisory opinion from the Attorney  
21 General regarding whether competition will be adversely affected  
22 and what mitigation measures could be adopted to avoid this result.

23 (c) Before authorizing the merger, acquisition, or a change in  
24 control of any electrical, gas, or telephone corporation organized  
25 and doing business in this state, where any of the entities that are  
26 parties to the proposed transaction has gross annual California  
27 revenues exceeding five hundred million dollars (\$500,000,000),  
28 the commission shall consider each of the criteria listed in  
29 paragraphs (1) to (8), inclusive, and find, on balance, that the  
30 merger, acquisition, or control proposal is in the public interest.

31 (1) Maintain or improve the financial condition of the resulting  
32 public utility doing business in the state.

33 (2) Maintain or improve the quality of service to public utility  
34 ratepayers in the state.

35 (3) Maintain or improve the quality of management of the  
36 resulting public utility doing business in the state.

37 (4) Be fair and reasonable to affected public utility employees,  
38 including both union and nonunion employees.

39 (5) Be fair and reasonable to the majority of all affected public  
40 utility shareholders.

~~(6) Be beneficial on an overall basis to state and local economies, and to the communities in the area served by the resulting public utility.~~

~~(7) Preserve the jurisdiction of the commission and the capacity of the commission to effectively regulate and audit public utility operations in the state.~~

~~(8) Provide mitigation measures to prevent significant adverse consequences which may result.~~

~~(d) When reviewing a merger, acquisition, or change in control proposal, the commission shall consider reasonable options to the proposal recommended by other parties, including no new merger, acquisition, or control, to determine whether comparable short-term and long-term economic savings can be achieved through other means while avoiding the possible adverse consequences of the proposal.~~

~~(e) The person or corporation seeking acquisition or control of a public utility organized and doing business in this state shall have, before the commission, the burden of proving by a preponderance of the evidence that the requirements of subdivisions (b) and (c) are met.~~

~~(f) In determining whether an acquiring utility has gross annual revenues exceeding the amount specified in subdivisions (b) and (c), the revenues of that utility's affiliates shall not be considered unless the affiliate was utilized for the purpose of effecting the merger, acquisition, or control.~~

~~(g) Paragraphs (1) and (2) of subdivision (b) shall not apply to the formation of a holding company.~~

~~(h) For purposes of paragraphs (1) and (2) of subdivision (b), the legislature does not intend to include acquisitions or changes in control that are mandated by either the commission or the Legislature as a result of, or in response to any electric industry restructuring. However, the value of an acquisition or change in control may be used by the commission in determining the costs or benefits attributable to any electrical industry restructuring and for allocating those costs or benefits for collection in rates.~~

~~SEC. 3.— Section 854.5 is added to the Public Utilities Code, to read:~~

~~854.5.— (a) When authorizing a merger, acquisition, or change in control pursuant to this chapter, the commission shall not~~



1 ~~establish an entity to receive benefits on behalf of ratepayers~~  
2 ~~without first obtaining statutory authorization from the Legislature.~~  
3 ~~(b) No commissioner shall be a director or officer of an entity~~  
4 ~~formed to receive benefits on behalf of ratepayers. The holding of~~  
5 ~~simultaneous positions as a commissioner and as a director or~~  
6 ~~officer of an entity formed to receive benefits of behalf of~~  
7 ~~ratepayers resulting from approval of a merger, acquisition, or~~  
8 ~~change in control pursuant to this chapter is the holding of public~~  
9 ~~offices that are incompatible pursuant to Section 1099 of the~~  
10 ~~Government Code.~~

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